

U.S. DEPARTMENT OF
COMMERCE
OFFICE OF
FEDERAL MARITIME COMMISSION

Original Title Page

MSC/ZIM SOUTH AMERICA EAST COAST VESSEL SHARING AGREEMENT

A Cooperative Working Agreement

FMC Agreement No. 012155-001
(2nd Edition)

Expiration Date: None

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ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is the MSC/Zim South America East Coast Vessel Sharing Agreement (the "Agreement").

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to authorize the parties to share vessels and provide space to one another in the Trade (as hereinafter defined) and to authorize the parties to enter into a limited range of cooperative working arrangements in connection therewith.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter "Party" or "Parties") are:

1. Mediterranean Shipping Co. S.A. ("MSC")
~~12-14 Chemin Rieu 40, Av. Eugene Pittard~~
~~1208 1206~~ Geneva
Switzerland
2. Zim Intergrated Shipping Services Ltd. ("Zim")
9 Andrei Sakharov Street
"Matam" – Scientific Industries Center
P.O.B. 1723
Haifa, 31016 Israel

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement covers the trade between ports on the U.S. Atlantic and Gulf Coasts (Eastport, ME to Brownsville, TX range) on the one hand and ports in the Bahamas, the Dominican Republic, Jamaica, Mexico, ~~Panama~~, Argentina, Brazil and Uruguay on the other hand (the "Trade").

ARTICLE 5: AGREEMENT AUTHORITY

5.1 Vessel Sharing.

(a) The Parties shall operate two (2) strings using five (5) vessels, ~~a string of seven (7) vessels~~, five three of which will be provided by MSC and two of which will be provided by Zim. These vessels shall each have a nominal capacity of approximately 3,500 ~~2,500~~ TEUs (declared capacity of 2,480 TEUs @ 14 tons per TEU). Without further amendment hereto, the Parties are authorized to operate up to eight (8) ~~nine (9)~~ vessels, each with a nominal capacity of up to 4,500 ~~3,500~~ TEU (~~@ 14 tons per TEU~~). Initially, the vessels deployed pursuant to this Article 5.1 shall operate in the trades between the U.S. Gulf Coast and ports in the Dominican Republic, Jamaica and Mexico, ~~Brazil and Panama~~; provided, however, that without further amendment hereto, the vessels may operate anywhere within the Trade. Each Party shall be responsible for the operation of the vessels it provides, include the expense thereof.

(b) ~~Subject to adjustment under Article 5.2~~, Zim shall receive space for 992 ~~715~~ TEUs (including 80 ~~100~~ reefer plugs) on each sailing of the vessels deployed pursuant to this Article 5.1, and MSC shall receive space for 1,488 ~~1,785~~ TEUs (including 120 reefer plugs). The Parties may, ~~in addition to the exchange described in Article 5.2 below~~, buy and sell slots from within their respective allocations to/from one another in such amounts and on such terms and conditions as they may agree from time to time. In addition, the Parties may revise the foregoing allocations up or down by up to 50% without further amendment to this Agreement. Neither Party may subcharter space on the vessels deployed pursuant to this Article 5.1 to any third-party without the prior written consent of the other Party.

5.2 Space Chartering/Exchange.

MSC shall sell to Zim, and Zim shall purchase from MSC, space for 915 ~~200~~ TEUs per voyage (@ 14 tons per TEU)(including 135 ~~35~~ reefer plugs and an option to load 65 additional reefers with 2 weeks' notice and always subject to MSC's prior written approval) on each sailing of MSC's ECSA1 service operated between the U.S. East Coast and the Bahamas, Dominican Republic, Brazil, Argentina and Uruguay, of which 250 TEUs (and 35 reefer plugs) may be used to move cargo to/from the U.S. East Coast. Any alteration of the ports of call of the ECSA1 service shall be announced to Zim with 30 days' notice, and Zim will have the right to reduce its slot purchase as a result thereof. ~~In addition, Zim shall provide MSC with space for 100 TEUs on each southbound sailing of the service operated under Article 5.1 hereof in exchange for an additional 100 TEUs on each southbound sailing of~~

~~MSC's ECSA1 service, such that Zim's total allocation on the ECSA1 service shall be 300 TEUs southbound and 200 TEUs northbound.~~ MSC may make additional space available to Zim on the ECSA1 service in such amounts and on such conditions as the Parties may agree from time to time. Zim may not subcharter space it receives on the ECSA1 service to any third-party without the prior written consent of MSC.

5.3 Terminals and Stevedores.

The Parties are authorized to discuss and agree upon the joint and/or individual negotiation of appropriate contracts with terminal operators and stevedores, and to reach agreement on other issues relating to the loading and/or discharge of cargo.

5.4 Other Matters.

The Parties are authorized to discuss and agree upon any and all technical and operational matters described in 46 C.F.R. §535.408(b) including, but not limited to, procedures for allocating space, forecasting, operations, maintenance of vessel schedules, remedial measures to be taken in the event of scheduling problems, consequences of failure to maintain schedules or remedy problems with respect to same, port omissions, recordkeeping, responsibility for loss, damage or injury (including provisions of bills of lading relating to same), the interchange of information and data regarding all matters within the scope of this Agreement, terms and conditions for force majeure relief, insurance, guarantees, indemnification, and compliance with customs, safety, security, documentation, and other regulatory requirements.

5.5 Legal Relationship. Nothing in this Agreement shall be construed as creating a partnership, association, joint venture or joint service. Each Party shall utilize and maintain its own marketing and sales organizations, issue its own bills of lading, collect its own freight and settle its own claims with respect to cargo moving under its bills of lading.

ARTICLE 6: OFFICIALS OF THE AGREEMENT AND
DELEGATIONS OF AUTHORITY

The following are authorized to subscribe to and file this Agreement and any accompanying materials and any subsequent modifications to this Agreement with the Federal Maritime Commission:

- (i) Any authorized officer of each of the Parties; and
- (ii) Legal counsel for each of the Parties.

ARTICLE 7: MEMBERSHIP AND READMISSION

Membership is limited to the Parties hereto except that additional ocean common carriers may be admitted or readmitted by unanimous consent of the Parties and by amendment of the Agreement pursuant to the Shipping Act of 1984, as amended.

ARTICLE 8: VOTING

All actions taken pursuant to this Agreement shall require unanimous agreement of the Parties.

ARTICLE 9: DURATION AND TERMINATION OF AGREEMENT

9.1 This Agreement shall become effective on the date it is effective under the Shipping Act of 1984, as amended, shall have a minimum duration of two (2) years from the effective date of Amendment No. 1 hereto, and shall continue in effect indefinitely thereafter, subject to termination pursuant to Article 9.2 hereof.

9.2 Any Party may withdraw from this Agreement effective on not less than six (6) months' prior written notice; provided, however, that such notice may not be given until Amendment No. 1 to this Agreement has been in effect for eighteen (18) months.

9.3 Any termination of this Agreement shall be without prejudice to the accrued rights and obligations of the Parties hereunder and to any right and obligation hereunder expressed to survive such termination.

ARTICLE 10: APPLICABLE LAW

The interpretation, construction and enforcement of this Agreement shall be governed by the laws of England, to the exclusion of their rules on the conflict of law, which would refer the matter to the laws of another jurisdiction. Notwithstanding the foregoing, nothing herein shall relieve the Parties of their obligations to comply with

the U.S. Shipping Act of 1984, as amended, and all applicable laws and regulations of the countries in the Trade.

ARTICLE 11: DISPUTE RESOLUTION

11.1 Any dispute or matter arising out of or under this Agreement shall be governed by and construed in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the High Court in London.

11.2 Notwithstanding the above, any dispute where the claim or counterclaim does not exceed US\$100,000 shall be referred to arbitration under the LMAA Small Claims Procedure.

11.3 Either Party may at any time call for mediation of a dispute under the auspices of the LMAA. Unless agreed, such mediation shall not otherwise interfere with or affect anything else including the time bars and Court procedure. If a Party calls for meditation and such is refused, the Party calling for mediation shall be entitled to bring that refusal to the attention of the Court.

ARTICLE 12: NON-ASSIGNMENT

A Party shall not assign its rights or delegate its duties under this Agreement to any other person or entity without the prior written consent of the other Party.

ARTICLE 13: NOTICES

All notices pertaining to the Agreement, except as the Parties may otherwise provide, shall be sent by e-mail or facsimile transmission and confirmed by first class mail, postpaid to the addresses set forth in Article 3 hereof.

ARTICLE 14: ENFORCEABILITY

If at any time during the performance of the Agreement, any provision hereof shall be held to be invalid, illegal or unenforceable, the remainder of the Agreement shall not be affected thereby and shall be valid and be enforceable to the full extent permitted by law.